

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2007-1122-PST-E TCEQ ID: RN102363074 CASE NO.: 34198**  
**RESPONDENT NAME: Neches Food Store**

Page 1 of 2

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Neches Food Store, 1150 Texas Avenue, Bridge City, Orange County</p> <p><b>TYPE OF OPERATION:</b> Property with underground storage tanks ("USTs")</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on March 17, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b></p> <p style="margin-left: 20px;"><b>TCEQ Attorney/SEP Coordinator:</b> None</p> <p style="margin-left: 20px;"><b>TCEQ Enforcement Coordinator:</b> Mr. Philip DeFrancesco, Enforcement Division, Enforcement Team 6, MC R-04, (817) 588-5933; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171</p> <p style="margin-left: 20px;"><b>Respondent:</b> Mr. Howard P. Morse, President, Neches Food Store, 1075 Orange Street, Vidor, Texas 77662</p> <p style="margin-left: 20px;"><b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> June 26, 2007</p> <p><b>Date of NOV/NOE Relating to this Case:</b> July 3, 2007 (NOE)</p> <p><b>Background Facts:</b> This was a routine record review.</p> <p><b>WASTE</b></p> <p>1) Failed to either permanently remove from service no later than 60 days after the prescribed implementation date, three underground storage tanks (USTs) for which any applicable component of the system is not brought into timely compliance with the upgrade requirements or ensure that any residue from stored regulated substances which remained in a temporarily out-of-service UST system did not exceed 2.5 centimeters at the deepest point and did not exceed 0.3 percent by weight of the system at full capacity. Specifically, the unleaded tank contained 10 inches of gasoline and trace amounts of water and the plus unleaded tank contained 6 feet of gasoline and trace amounts of water [30 TEX. ADMIN. CODE §§ 334.47(a)(2) and 334.54(d)(2)].</p> <p>2) Failed to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons [30 TEX. ADMIN. CODE § 334.54(b)].</p>	<p><b>Total Assessed:</b> \$7,875</p> <p><b>Total Deferred:</b> \$1,575  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$6,300</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, either:</p> <p>i. Ensure that the UST system has been protected from corrosion, emptied of all regulated substances, and maintain all piping, pumps, manways, tank access points and ancillary equipment in a capped, plugged, locked, or otherwise secured manner; or</p> <p>ii. Permanently remove the UST system from service.</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a.i or a.ii.</p>

Additional ID No(s): 53663



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision May 25, 2007

**TCEQ**  
**DATES**

Assigned 9-Jul-2007

PCW 16-Jul-2007

Screening 13-Jul-2007

EPA Due

**RESPONDENT/FACILITY INFORMATION**

Respondent Neches Food Store

Reg. Ent. Ref. No. RN102363074

Facility/Site Region 10-Beaumont

Major/Minor Source Minor

**CASE INFORMATION**

Enf./Case ID No. 34198

Docket No. 2007-1122-PST-E

Media Program(s) Petroleum Storage Tank

Multi-Media

No. of Violations 1

Order Type 1660

Enf. Coordinator Philip DeFrancesco

EC's Team Enforcement Team 6

Admin. Penalty \$ Limit Minimum \$0 Maximum \$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)**

Subtotal 1 \$7,500

**ADJUSTMENTS (+/-) TO SUBTOTAL 1**

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 5% Enhancement

Subtotals 2, 3, &amp; 7 \$375

Notes

Enhancement for one prior NOV with same or similar violations.

Culpability

No

0% Enhancement

Subtotal 4 \$0

Notes

The respondent does not meet the culpability criteria.

Good Faith Effort to Comply

0% Reduction

Subtotal 5 \$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary

Ordinary

N/A

X

(mark with x)

Notes

The respondent does not meet the good faith criteria.

0% Enhancement\*

Subtotal 6 \$0

Total EB Amounts \$4,622  
Approx. Cost of Compliance \$10,000

\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7**

Final Subtotal \$7,875

**OTHER FACTORS AS JUSTICE MAY REQUIRE**

Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount \$7,875

**STATUTORY LIMIT ADJUSTMENT**

Final Assessed Penalty \$7,875

**DEFERRAL**

20%

Reduction

Adjustment -\$1,575

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

**PAYABLE PENALTY**

\$6,300

Screening Date 13-Jul-2007

Docket No. 2007-1122-PST-E

PCW

Respondent Neches Food Store

Policy Revision 2 (September 2002)

Case ID No. 34198

PCW Revision May 25, 2007

Reg. Ent. Reference No. RN102363074

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Philip DeFrancesco

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component Number of... Enter Number Here Adjust.

NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Enhancement for one prior NOV with same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 5%

<b>Screening Date</b> 13-Jul-2007 <b>Respondent</b> Neches Food Store <b>Case ID No.</b> 34198 <b>Reg. Ent. Reference No.</b> RN102363074 <b>Media [Statute]</b> Petroleum Storage Tank <b>Enf. Coordinator</b> Philip DeFrancesco <b>Violation Number</b> <input type="text" value="1"/>	<b>Docket No.</b> 2007-1122-PST-E <div style="text-align: right;"> <b>PCW</b>  <small>Policy Revision 2 (September 2002)</small>  <small>PCW Revision May 25, 2007</small> </div>																								
<b>Rule Cite(s)</b> <input style="width: 100%;" type="text" value="30 Tex. Admin. Code §§ 334.47(a)(2), 334.54(b) and (d)(2)"/>																									
<b>Violation Description</b> <input style="width: 100%;" type="text" value="Failed to either permanently remove from service, no later than 60 days after the prescribed implementation date, three USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements or ensure that any residue from stored regulated substances which remained in a temporarily out-of-service UST system did not exceed 2.5 centimeters at the deepest point and did not exceed 0.3 percent by weight of the system at full capacity. Specifically, the unleaded tank contained 10 inches of gasoline and trace amounts of water and the plus unleaded tank contained 6 feet of gasoline and trace amounts of water. Also, failed to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons."/>																									
<b>Base Penalty</b> <input style="width: 100%;" type="text" value="\$10,000"/>																									
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>																									
<b>OR</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;"></td> <td style="width: 10%; text-align: center;"><b>Harm</b></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> </tr> <tr> <td><b>Release</b></td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> <td></td> </tr> <tr> <td>Actual</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td></td> </tr> <tr> <td>Potential</td> <td style="text-align: center;">x</td> <td><input type="text"/></td> <td><input type="text"/></td> <td></td> </tr> </table> <div style="margin-top: 10px;"> <b>Percent</b> <input style="width: 100%;" type="text" value="25%"/> </div>		<b>Harm</b>				<b>Release</b>	Major	Moderate	Minor		Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>		Potential	x	<input type="text"/>	<input type="text"/>					
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Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>																						
Potential	x	<input type="text"/>	<input type="text"/>																						
<b>&gt;&gt; Programmatic Matrix</b>																									
<b>Matrix Notes</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;"></td> <td style="width: 10%; text-align: center;"><b>Falsification</b></td> <td style="width: 10%; text-align: center;">Major</td> <td style="width: 10%; text-align: center;">Moderate</td> <td style="width: 10%; text-align: center;">Minor</td> <td style="width: 10%;"></td> </tr> <tr> <td></td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td></td> </tr> </table> <div style="margin-top: 10px;"> <b>Percent</b> <input style="width: 100%;" type="text" value="0%"/> </div> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;">             Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.           </div>		<b>Falsification</b>	Major	Moderate	Minor			<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>													
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<b>Violation Events</b>																									
<div style="display: flex; justify-content: space-between;"> <div> <b>Number of Violation Events</b> <input style="width: 100px;" type="text" value="3"/> </div> <div> <b>Number of violation days</b> <input style="width: 100px;" type="text" value="17"/> </div> </div> <div style="margin-top: 10px;"> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;"></td> <td style="width: 10%; text-align: center;">daily</td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> </tr> <tr> <td></td> <td style="text-align: center;">monthly</td> <td style="text-align: center;">x</td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td></td> <td style="text-align: center;">quarterly</td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td></td> <td style="text-align: center;">semiannual</td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td></td> <td style="text-align: center;">annual</td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td></td> <td style="text-align: center;">single event</td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> </tr> </table> <div style="margin-top: 10px;"> <b>Violation Base Penalty</b> <input style="width: 100%;" type="text" value="\$7,500"/> </div> </div> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;">             Three monthly events (one month per tank) are recommended from the record review date of June 26, 2007 to the July 13, 2007 screening date.           </div>			daily				monthly	x	<input type="text"/>		quarterly	<input type="text"/>	<input type="text"/>		semiannual	<input type="text"/>	<input type="text"/>		annual	<input type="text"/>	<input type="text"/>		single event	<input type="text"/>	<input type="text"/>
	daily																								
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	annual	<input type="text"/>	<input type="text"/>																						
	single event	<input type="text"/>	<input type="text"/>																						
<b>Economic Benefit (EB) for this violation</b>																									
<div style="display: flex; justify-content: space-between;"> <div> <b>Estimated EB Amount</b> <input style="width: 100px;" type="text" value="\$4,622"/> </div> <div> <b>Statutory Limit Test</b> </div> </div> <div style="margin-top: 10px;"> <b>Violation Final Penalty Total</b> <input style="width: 100%;" type="text" value="\$7,875"/> </div> <div style="margin-top: 10px;"> <b>This violation Final Assessed Penalty (adjusted for limits)</b> <input style="width: 100%;" type="text" value="\$7,875"/> </div>																									

**Economic Benefit Worksheet**

**Respondent** Neches Food Store  
**Case ID No.** 34198  
**Reg. Ent. Reference No.** RN102363074  
**Media** Petroleum Storage Tank  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$10,000	22-Dec-1998	18-Mar-2008	9.2	\$4,622	n/a	\$4,622

Notes for DELAYED costs

Estimated cost to permanently remove the UST system from service. The Date Required is the date when the respondent was required to upgrade the UST system and the Final Date is based on the estimated compliance date.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

TOTAL

\$4,622

## Compliance History

Customer/Respondent/Owner-Operator:	CN601238579	Neches Food Store	Classification: AVERAGE BY DEFAULT	Rating: 3.01
Regulated Entity:	RN102363074	NECHES FOOD STORE	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	53663	
Location:	1150 TEXAS AVE, BRIDGE CITY, TX, 77611		Rating Date: September 01 06	Repeat Violator: NO
TCEQ Region:	REGION 10 - BEAUMONT			
Date Compliance History Prepared:	July 18, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	July 18, 2002 to July 18, 2007			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Philip DeFrancesco Phone: (817) 588-5933

### Site Compliance History Components

- |  |     |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period?    | No  |
| 3. If Yes, who is the current owner?   | N/A |
| 4. If Yes, who was/were the prior owner(s)?  | N/A |
| 5. When did the change(s) in ownership occur?  | N/A |

#### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- |   |            |          |
|---|------------|----------|
| 1 | 11/06/2006 | (514013) |
| 2 | 07/05/2007 | (565774) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- |              |  |                 |          |
|--------------|--|-----------------|----------|
| Date:        | 11/06/2006   | (514013)        |          |
| Self Report? | NO   | Classification: | Moderate |
| Citation:    | 30 TAC Chapter 334, SubChapter C 334.47(a)(2)  |                 |          |
| Description: | Failure to upgrade a temporary out-of-service tank to meet all technical standards.  |                 |          |
| Self Report? | NO   | Classification: | Moderate |
| Citation:    | 30 TAC Chapter 334, SubChapter C 334.54(d)(2)  |                 |          |
| Description: | Failure to ensure that any residue from stored regulated substances which remain in a temporarily out of service UST shall not exceed 2.5 centimeters (one inch) at the deepest point and shall not exceed 0.3 percent by weight of the system at full capacity. |                 |          |
| Self Report? | NO   | Classification: | Moderate |
| Citation:    | 30 TAC Chapter 334, SubChapter C 334.54(b)(2)  |                 |          |
| Description: | Failure to cap, plug, lock or otherwise prevent access, tampering, or vandalism by unauthorized persons of all piping, pumps, manways, tank access points, and ancillary equipment.  |                 |          |
- F. Environmental audits.  
N/A
- G. Type of environmental management systems (EMSs).  
N/A
- H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
NECHES FOOD STORE  
RN102363074

§ BEFORE THE  
§  
§ TEXAS COMMISSION ON  
§  
§ ENVIRONMENTAL QUALITY

## AGREED ORDER DOCKET NO. 2007-1122-PST-E

### I. JURISDICTION AND STIPULATIONS

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Neches Food Store ("Neches Food") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Neches Food appear before the Commission and together stipulate that:

1. Neches Food owns property with underground storage tanks ("USTs") at 1150 Texas Avenue in Bridge City, Orange County, Texas (the "Facility").
2. Neches Food's three USTs are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Commission and Neches Food agree that the Commission has jurisdiction to enter this Agreed Order, and that Neches Food is subject to the Commission's jurisdiction.
4. Neches Food received notice of the violations alleged in Section II ("Allegations") on or about July 8, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Neches Food of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Seven Thousand Eight Hundred Seventy-Five Dollars (\$7,875) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Neches Food has paid Six Thousand Three Hundred Dollars (\$6,300) of the



administrative penalty and One Thousand Five Hundred Seventy-Five Dollars (\$1,575) is deferred contingent upon Neches Food's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Neches Food fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Neches Food to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Neches Food have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Neches Food has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

As owner of the Facility, Neches Food is alleged to have:

1. Failed to either permanently remove from service no later than 60 days after the prescribed implementation date, three USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements or ensure that any residue from stored regulated substances which remained in a temporarily out-of-service UST system did not exceed 2.5 centimeters at the deepest point and did not exceed 0.3 percent by weight of the system at full capacity, in violation of 30 TEX. ADMIN. CODE §§ 334.47(a)(2) and 334.54(d)(2), as documented during a record review conducted on June 26, 2007. Specifically, the unleaded tank contained 10 inches of gasoline and trace amounts of water and the plus unleaded tank contained 6 feet of gasoline and trace amounts of water.
2. Failed to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons, in violation of 30 TEX. ADMIN. CODE § 334.54(b), as documented during a record review conducted on June 26, 2007.

## **III. DENIALS**

Neches Food generally denies each allegation in Section II ("Allegations").



#### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Neches Food pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Neches Food's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Neches Food Store, Docket No. 2007-1122-PST-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. It is further ordered that Neches Food shall undertake the following technical requirements:

- a. Within 30 days after the effective date of this Agreed Order, either:

- i. Ensure that the UST system has been protected from corrosion, emptied of all regulated substances, and maintain all piping, pumps, manways, tank access points and ancillary equipment in a capped, plugged, locked, or otherwise secured manner, in accordance with 30 TEX. ADMIN. CODE § 334.54; or
- ii. Permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55.

- b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a.i or 2.a.ii. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087



with a copy to:

Waste Section, Manager  
Beaumont Regional Office  
Texas Commission on Environmental Quality  
3870 Eastex Freeway  
Beaumont, Texas 77703-1892

3. The provisions of this Agreed Order shall apply to and be binding upon Neches Food. Neches Food is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If Neches Food fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Neches Food's failure to comply is not a violation of this Agreed Order. Neches Food shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Neches Food shall notify the Executive Director within seven days after Neches Food becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Neches Food shall be made in writing to the Executive Director. Extensions are not effective until Neches Food receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Neches Food in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Neches Food, or three days after the date on which the Commission mails notice of the Order to Neches Food, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.





✓  
Neches Food Store  
DOCKET NO. 2007-1122-PST-E  
Page 5

## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

*John Brown*  
For the Executive Director

3/5/2008  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

*Howard P. Morse*  
Signature

10-5-07  
Date

HOWARD P MORSE  
Name (Printed or typed)  
Authorized Representative of  
Neches Food Store

*Pres*  
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

